

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PASQUALE NIGRO,

Petitioner,

No. CIV S-05-0712 GEB GGH P

vs.

M. EVANS, Warden,

Respondent.

ORDER

A joint scheduling statement in this matter was filed on July 26, 2005, pursuant to the court's order filed May 23, 2005.¹ After review of the joint statement, the court makes the following ORDERS:

1. Should petitioner elect to stand on the existing petition, petitioner must so inform the court, as well as file any supplemental points and authorities, within 90 days;

2. Should the original petition contain unexhausted claims, petitioner must, within 90 days, file an amended petition setting forth exhausted claims only and also inform the court at that time whether petitioner elects to proceed on any such amended petition;

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¹The court granted an extension of time by order filed on July 5, 2005.

1 3. Should petitioner identify unexhausted claims which petitioner would seek to
2 exhaust, petitioner shall identify all claims, exhausted and unexhausted, shall file an amended
3 exhausted-claims-only petition if the original petition does not contain only exhausted claims or
4 if it does not contain all of his exhausted claims, and shall move the court to hold the proceedings
5 in abeyance pending exhaustion of state court remedies as to the unexhausted claims, within 90
6 days. In so moving, petitioner must show good cause for having failed to exhaust state court
7 remedies prior to the filing of the instant petition. Rhines v. Weber, ___ U.S. ___, 125 S. Ct.
8 1528, 1535 (2005). If a stay is granted, petitioner must immediately pursue state court
9 exhaustion and, upon said exhaustion, immediately file an amended petition containing all claims
10 newly and previously exhausted, after which any stay will be lifted and this matter will proceed;

11 4. Petitioner must determine whether petitioner believes discovery and
12 investigations are necessary, and if so, must move for leave to conduct discovery under the Rules
13 Governing Section 2254 Cases, Rule 6(a), within 60 days.

14 5. Should petitioner perceive the need to move for an evidentiary hearing
15 following the briefing, counsel must do so at the earliest appropriate opportunity; should
16 petitioner so move, respondent must file any opposition within 30 days of service of the motion;
17 and

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1 6. Should petitioner choose to proceed on the original petition or on an amended
2 exhausted-claims-only petition, respondent must file a response, in the form of a motion or an
3 answer, within 60 days of petitioner's filing and serving either petitioner's statement informing
4 the court of the choice to proceed on the original petition, along with supplemental points and
5 authorities, or of filing and serving an amended exhausted-claims-only petition, along with a
6 statement indicating an intent to proceed thereon. Should the response be in the form of a
7 motion, the opposition must be filed and served within 30 days thereafter. If an answer is filed,
8 petitioner's reply, if any, is due within 30 days of service of the answer.

9 DATED: 8/11/05

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11 /s/ Gregory G. Hollows

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13 GREGORY G. HOLLOWS
14 UNITED STATES MAGISTRATE JUDGE

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14 nigr0712.pst